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Letter dated 21 July 2011 from the Ombudsperson addressed to the President of the Security Council

I have the honour to submit herewith the second report of the Office of the Ombudsperson, pursuant to paragraph 16 (c) of annex II to Security Council resolution 1989 (2011), according to which the Ombudsperson shall submit biannual reports to the Council summarizing her activities. The report describes the activities of the Office of the Ombudsperson in the six months since the previous report, between 21 January 2011 and 21 July 2011.

I would appreciate it if the present letter and the report were brought to the attention of members of the Security Council and issued as a document of the Council.

(*Signed*) Kimberly **Prost**
Ombudsperson

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Report of the Office of the Ombudsperson pursuant to Security Council resolution 1989 (2011)

I. Background

1. The Office of the Ombudsperson was established by the Security Council in its resolution 1904 (2009) of 17 December 2009 for an initial period of 18 months, inter alia, to assist the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities (also known as the Al-Qaida and Taliban Sanctions Committee), when considering de-listing requests.

2. On 17 June 2011, by the adoption of its resolutions 1988 (2011) and 1989 (2011), the Security Council decided that the individuals and entities associated with Al-Qaida on the list established pursuant to resolutions 1267 (1999) and 1333 (2000) (the Consolidated List) would be placed on another list, hereafter referred to as the Al-Qaida Sanctions List, which would fall under the purview of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities (the Al-Qaida Sanctions Committee). The list of individuals and entities associated with the Taliban would fall under the purview of a separate committee, the Security Council Committee established pursuant to resolution 1988 (2011). Pursuant to Council resolution 1989 (2011), the scope of the mandate of the Ombudsperson extends only to the Al-Qaida Sanctions List. The mandate of the Office of the Ombudsperson was extended by a further 18 months, until December 2012.

3. In a letter dated 30 June 2011, the Secretary-General reappointed Kimberly Prost (Canada) to serve as Ombudsperson (S/2011/404).

4. The present report provides an update on the activities of the Office of the Ombudsperson since the first report of the Office, which was transmitted to the Security Council in a letter dated 21 January 2011 from the Ombudsperson addressed to the Secretary-General (S/2011/29).

II. Summary of activities: development of the Office of the Ombudsperson

General

5. Since January 2011, the Ombudsperson has continued to work to build up the Office on the basis of the principles of independence and accessibility.

Outreach and publicizing the work of the Office of the Ombudsperson

6. There continues to be a need to publicize and make known the work of the Office of the Ombudsperson. To this end, and to the extent possible within existing resources, the Ombudsperson has continued to carry out outreach activities over the past six months. The Ombudsperson delivered remarks on the work of her Office in an intergovernmental context at the forty-first meeting of the Council of Europe Committee of Legal Advisers on Public International Law in Strasbourg, France, on 18 March 2011 and at an open briefing to Member States in New York on 14 July

2011. Also on 14 July, a press conference was held to provide the public with an update on the activities of the Office. In addition, the Ombudsperson gave presentations to the Human Rights Lawyers Association in London on 8 June 2011 and at a conference at the National Autonomous University of Mexico in Mexico City on 24 June 2011. She has also delivered lectures to law students from Canada, Colombia and Slovenia.

7. In an effort to reach more directly individuals and entities who might wish to bring a de-listing petition, material describing the role of the Ombudsperson and the de-listing application process has been provided to the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004), the mandate of which was subsequently extended by the Security Council in its resolution 1989 (2011), and the United Nations Office on Drugs and Crime (UNODC) for distribution, as appropriate, during the course of field missions. In addition, to the extent possible given resource constraints, letters describing the role of the Office are being transmitted on an ongoing basis to individuals and entities with known addresses who were listed prior to the establishment of the Office. This is consistent with the intent expressed by the Security Council in paragraph 15 (b) of annex II to resolution 1904 (2009) and paragraph 16 (b) of annex II to resolution 1989 (2011), pursuant to which listed individuals and entities shall be notified about the status of their listing.

Interaction with the Al-Qaida and Taliban Sanctions Committee and the Analytical Support and Sanctions Monitoring Team

8. The Ombudsperson has appeared before the precursor to the Al-Qaida Sanctions Committee, the Al-Qaida and Taliban Sanctions Committee, on three occasions since January 2011: on 1 March, to provide an informal introduction to case 1; on 10 May, to present the comprehensive report in case 1, pursuant to paragraph 9 of annex II to Security Council resolution 1904 (2009), and to informally introduce cases 2 and 5; and on 31 May, to formally present the comprehensive reports in cases 2 and 5 pursuant to resolution 1904 (2009). In addition, the Ombudsperson has met bilaterally with individual Committee members on numerous occasions, primarily on case-related issues. The Ombudsperson has submitted comprehensive reports to the Committee on the first six cases, four pursuant to resolution 1904 (2009) and two pursuant to resolution 1989 (2011), and has provided a number of written updates to the Committee in relation to various cases.

9. The Ombudsperson has met with the coordinator and the members of the Analytical Support and Sanctions Monitoring Team on several occasions. On an operational level, there is ongoing communication with various experts in the Monitoring Team, as appropriate to particular cases. The Monitoring Team continues to provide the Ombudsperson with relevant information on individual cases, in accordance with paragraph 3 of annex II to Security Council resolution 1904 (2009).

Liaison with States, intergovernmental organizations, United Nations bodies and non-governmental organizations

10. The Ombudsperson has continued to interact with States over the past six months, in particular with States involved in the de-listing petitions that have been

presented. She has met representatives of over 20 States in that context, some on multiple occasions. She has also continued to meet with the informal group of like-minded States on targeted sanctions[1] and with representatives of the European Union.

11. Similarly, the Ombudsperson has liaised with representatives of UNODC, the Counter-Terrorism Implementation Task Force and the Executive Directorate of the Counter-Terrorism Committee. She has met with the Special Representative of the Secretary-General for Somalia and Head of the United Nations Political Office for Somalia and with the Coordinator of the Monitoring Group on Somalia and Eritrea.

12. The Ombudsperson has made a sustained effort to build relationships and work with civil society and non-governmental organizations, particularly those working on human rights and sanctions issues. To that end, the Ombudsperson has met with academics and representatives of non-governmental organizations[2] and participated in and presented at civil society seminars and meetings.[3]

Procedures and research

13. The Ombudsperson continues to follow legal and other developments in relevant jurisprudence, articles and reports. She has also taken advantage of available opportunities to discuss the broad range of issues related to the de-listing process with judges of national, regional and international courts, prosecutors and private lawyers, including representatives of the American Bar Association and the International Bar Association. She has discussed general legal issues of relevance with staff in the Office of Legal Affairs of the Secretariat and with experts from the Executive Directorate of the Counter-Terrorism Committee and the Analytical Support and Sanctions Monitoring Team, among others.

Website

14. The website of the Office of the Ombudsperson has been further developed to include a section tracking the status of each de-listing request as it moves through the de-listing process. As described below, information about the Ombudsperson's approach and standards for the preparation of a comprehensive report has been included, along with selected presentations made by the Ombudsperson. In addition, to ensure that potential petitioners have a clear understanding of the process, material on the Ombudsperson's website has been updated to reflect the procedural changes brought about by Security Council resolution 1989 (2011). Copies of that material can be found in annex I to the present report.

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[1] Comprising Austria (as of January 2011), Belgium, Costa Rica, Denmark, Germany, Finland, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland.

[2] Including representatives of the Kroc Institute for International Peace Studies at the University of Notre Dame, the Program on Humanitarian Policy and Conflict Research at Harvard University, the Netherlands Institute of International Relations and Amnesty International.

[3] Including the Friedrich Ebert Stiftung seminar on strengthening the United Nations sanctions tools and a meeting of the NGO Working Group on the Security Council.

III. Summary of activities: de-listing cases

General

15. The activities of the Office of the Ombudsperson during the past six months related primarily to the de-listing requests submitted by individuals and entities. More cases were submitted during the reporting period than during the first six months of the Office's operations, and the case-related work has increased substantially over time.

De-listing cases and case inquiries

16. As at 21 July 2011, 14 requests for de-listing had been submitted to the Ombudsperson. All of them were accepted and are currently at various stages of the process set out in annex II to Security Council resolution 1904 (2009) or resolution 1989 (2011), as appropriate. One petitioner, Abu Sufian Al-Salamabi Muhammed Ahmed Abd Al-Razziq (Abousfian Abdelrazik), has made his application for de-listing public. The rest of the applications have remained confidential while under consideration.

17. Comprehensive reports have been circulated to the Committee in six cases. In accordance with the revised regime set out in Security Council resolution 1989 (2011), two of the reports included recommendations. As noted above, the Ombudsperson has appeared before the Committee to formally present the comprehensive reports in three cases. Two of the cases resulted in de-listing and the third case remains under the consideration of the Committee.[4] A description of the status of all of the cases, as at the date of the present report, is contained in annex II.

18. Ten of the 14 cases have been brought by individuals alone, 2 by an individual together with one or more entities, and 2 by entities alone. In 7 of the 14 cases, the petitioner is assisted by legal counsel. All of the cases involve individuals and entities that have been listed by the Committee on the basis of an association with Al-Qaida.

19. The Ombudsperson has communicated with potential petitioners and/or their legal counsel, which may result in the formal submission of de-listing requests.

Working methods and standards

20. During the reporting period, and in dealing with the increased number of petitions, the Ombudsperson had the opportunity to consistently apply the working methods developed with the aim of enhancing the fairness and transparency of the process. In the six cases for which comprehensive reports were submitted, the information-gathering and dialogue periods were used to collect the information relied upon to list the relevant individual and/or entity and to transmit that

[4] The petitioners in case 2 (Safet Ekrem Durgti, formerly listed with reference number QI.D.153.03) and case 5 (Tarek Ben Al-Bechir Ben Amara Al-Charaabi, formerly listed with reference number QI.A.61.02) were de-listed by the Committee on 14 June 2011. While the fact of the de-listings has been made known to the Ombudsperson and the public, the formal notification to the Ombudsperson pursuant to paragraph 11 of annex II of Security Council resolution 1904 (2009) has yet to be made. No information regarding case 1, which is with the Committee for a decision, has been transmitted to the Ombudsperson as at the date of the present report.

information to the petitioner. In all six cases, the petitioners were apprised of the case against them and had the opportunity to provide a response, which was then incorporated into the comprehensive report submitted to the Committee.[5]

21. In the six cases for which comprehensive reports were submitted to the Committee, the Ombudsperson asked questions of relevant States and presented specific questions to the petitioner, including, in some cases, questions raised by States and the Analytical Support and Sanctions Monitoring Team.

22. As stated in the first report of the Office of the Ombudsperson, fair process requires that the information gathered by the Ombudsperson be assessed in relation to a defined standard in order to ensure consistency and objectivity of analysis. With that goal in mind, on 28 February 2010 the Ombudsperson sent a separate document to the Chair of the Al-Qaida and Taliban Sanctions Committee entitled "Approach to and standard for analysis, observations and principal arguments" to be applied in the preparation of comprehensive reports, in which the Ombudsperson addressed the issue of whether it is justifiable for an individual or entity to continue to be listed on the basis of the information made available to the Ombudsperson. In other words, is there sufficient information to provide a reasonable and credible basis for the listing? To enhance the transparency of the de-listing process, the document has been made available, in the six official languages of the United Nations, on the website of the Office of the Ombudsperson and in annex III to the present report.

23. In practice, in the course of the dialogue phase and in the preparation of the comprehensive report, the Ombudsperson has had the opportunity to review the information presented by States and the petitioner. In the four cases for which a comprehensive report was submitted, in line with Security Council resolution 1904 (2009), the Ombudsperson provided observations on the sufficiency of the information reviewed, in accordance with the standards and approach described above. In the two cases submitted in accordance with Council resolution 1989 (2011), recommendations were made using that same assessment.

State cooperation

24. It remains evident that the ombudsperson process is heavily dependent upon the full cooperation of relevant States in each case. During the reporting period, State cooperation continued to be strong. In the 14 cases submitted to the Ombudsperson, including the 2 cases that were concluded, 51 requests for information were sent to 26 States. In the 6 cases for which a comprehensive report was submitted to the Committee, responses were received to 25 of the 28 requests made in relation to those de-listing requests. In the 6 cases for which a comprehensive report was submitted, the designating States and the States of residence or location/incorporation all provided responses. In many instances, more than one response was received, often as a result of follow-up questions posed by the Ombudsperson to the relevant State. Some States provided additional material on their own initiative.

[5] In one case, some information was provided by a State at a later stage of the process where no additional time extensions were possible. In that instance, the petitioner had less time to respond to the additional information. This fact has been brought to the Committee's attention in the comprehensive report submitted.

Dialogue with the petitioner

25. The Ombudsperson asked questions of the petitioner in every case that reached or advanced through the dialogue phase. The petitioner responded in all cases where the dialogue phase was completed. The exchange between the Ombudsperson and the petitioner took different forms depending on the nature of the case. The Ombudsperson met with the petitioner in one case. Exchanges with the petitioner during the dialogue phase proved to be important, as they provided an opportunity to fully explore the case with the petitioner and to pose questions that helped to define better the case-related information for consideration by the Committee.

Access to classified or confidential information

26. Gaining access to classified or confidential information continues to be one of the key challenges faced by the Ombudsperson.

27. In the 6 cases for which comprehensive reports were submitted, the issue was addressed in different ways, on a case-by-case basis, depending on the circumstances. In some cases, classified or confidential information was not used in the listing process. In other cases, such information was provided after it had been declassified. On one occasion, a sufficiently detailed summary of information was submitted. In another case, pursuant to an arrangement entered into with the State concerned (Switzerland), confidential information was provided to the Ombudsperson.

28. As the issue of access to classified or confidential information remains a serious concern, the Ombudsperson has begun a dialogue with several States, including States considered relevant in several de-listing cases presented to her, with a view to entering into arrangements or agreements that will allow the Ombudsperson to access classified or confidential information. To date, Belgium and Switzerland have entered into arrangements to that effect. Discussions are under way with other States and the matter is being given urgent attention.

IV. Other activities

Notifications of listing

29. In accordance with paragraph 16 (b) of annex II of Security Council resolution 1989 (2011) (and, prior to 17 June 2011, paragraph 15 (b) of annex II to resolution 1904 (2009)), where an address is known the Ombudsperson shall notify individuals or entities about the status of their listing.

30. In the six months since the first report of the Office, six entries were added to the Consolidated List. For each entry, consideration was given to the question of notification, but in five of the six cases no address was available or the information provided was insufficiently detailed for any reasonable prospect that the notification would reach the addressee. In the case of Khalil Ahmed Haqqani (TI.H.150.11.), notification letters were sent on 14 February 2011 to possible addresses identified on the basis of the information on his location that was available.[6]

[6] Four of the entries were related to Al-Qaida. Two of the entries, including the one for which notification letters were sent, were related to the Taliban.

31. Interpreting the provision on notification broadly, and consistent with the intent of the Security Council, on 3 June 2011 eight individuals whose addresses had recently been added to the Consolidated List through amendments were sent notification letters.

Miscellaneous matters

32. The Ombudsperson responded to various requests for information about the Al-Qaida and Taliban Sanctions Committee and provided material in answer to such requests, as appropriate. In addition, the Ombudsperson provided assistance to States seeking information or clarifications and responded to requests made by individuals who had already been de-listed.

V. Future work

33. The priorities of the Ombudsperson under the new mandate provided by Security Council resolution 1989 (2011) will remain the same. The paramount activity will continue to be that related to the de-listing requests, especially in light of the rapidly increasing caseload. Since its establishment, the Office of the Ombudsperson has received a total of 14 de-listing petitions, of which 8 were received during the reporting period. In addition, all six of the comprehensive reports completed to date were submitted during the same time frame. As forecast in the initial report, 12 of the 14 cases remain open as at 21 July 2011.

34. While it is difficult to anticipate with any certainty what the future caseload will be, it is reasonable to assume that the Office of the Ombudsperson will continue to receive requests at approximately the same rate in the next six-month period, which means that it is likely that between 15 and 20 cases will be open at the end of 2011.

35. As mentioned above, one of the continuing priority matters will be the development of arrangements or agreements for gaining access to classified or confidential information.

36. The Ombudsperson will continue to focus on outreach, in particular by developing additional methods to reach individuals and entities in isolated locations and/or who do not have ready access to communications facilities and technology.

37. The Ombudsperson will continue her liaison work with States, intergovernmental and non-governmental organizations and United Nations bodies, and will provide periodic briefings to Member States and the press. Opportunities for reaching out to civil society and the general public will also be pursued, as appropriate.

VI. Observations and conclusions

38. With six comprehensive reports submitted, it is possible to make some substantive observations about the effectiveness of the ombudsperson process and the challenges encountered. However, given that only two cases have been considered fully, this remains a preliminary assessment. In addition, the Security Council, through its resolution 1989 (2011), has introduced significant changes,

particularly to the decision phase, and any overall evaluation of the process will need to await implementation of and experience with those amendments.

Cooperation of States

39. The work carried out over the past six months has only served to highlight more clearly the critical importance of cooperation by States with the Office of the Ombudsperson. The overall effectiveness of the process is dependent upon States providing the Ombudsperson with all the relevant information used to list an individual or entity in a timely manner.

40. As noted, the Ombudsperson is, almost without exception, receiving replies and in all cases the States with the most relevant information for carrying out an analysis of a given case (usually the designating States and States of residence or location/incorporation) are providing responses. Nonetheless, there have been some key challenges in the information-gathering process with respect to the initial de-listing petitions. Most markedly, in certain cases it has been difficult to obtain the necessary level of detailed information for a proper analysis. In particular instances, there has also been an issue as to the timeliness of the disclosure of information.

41. Generally, these challenges are not due to a lack of willingness to cooperate but rather to the overarching problem concerning the disclosure of confidential or classified information. For example, in one case the declassification of material took an extended period of time, resulting in delays in presenting the information to the Ombudsperson. In another case, the information provided lacked essential details that could not be disclosed because of the classified nature of the underlying material. In those particular cases, solutions were proposed[7] and ways to address the situation were found, but the underlying issue remains a concern. The Security Council, in paragraph 25 of its resolution 1989 (2011), strongly urged Member States to provide all relevant information to the Ombudsperson, including confidential information, which should prove helpful in encouraging States to continue cooperating, including with respect to confidential information. In that same paragraph, the Council confirmed that the Ombudsperson must comply with any confidentiality restrictions placed on such information by the Member States providing it, which should be useful in advancing the negotiation of agreements and arrangements for the disclosure of classified or confidential information.

Achieving key elements of fair process

42. The cases mentioned above have illustrated clearly the potential for the Office of the Ombudsperson to carry out a fair process. With cooperation from States and through the information-gathering process, the dialogue phase and the comprehensive report, key components of fairness ("knowing the case against you" and "having an opportunity to respond and be heard") are being met. Moreover, the overall procedure allows the Ombudsperson to review the underlying information on a case and provide the Committee with an independent and objective assessment of whether the information is sufficient to warrant the continued listing of a given individual or entity. Since the adoption of Security Council resolution 1989 (2011), this aspect is now recognized more formally, as the Council mandated the

[7] The case involving the delay has not been completed.

Ombudsperson to provide a recommendation in addition to analysis, observations and an outline of principal arguments.

43. As to the fairness and transparency of the process in terms of deliberation and decision-making, the experience to date is too limited to provide a basis for any significant comment. The one point that can be made, at this early stage, is that Committee members have been carefully considering the comprehensive reports presented and engaging with the Ombudsperson with respect to their contents, a practice that hopefully will continue. In addition, with reference to this final phase of the process, consideration will need to be given to the changes resulting from Security Council resolution 1989 (2011), in particular paragraph 23, which deals with the decision-making process. Ultimately, any assessment will have to await practical implementation of that aspect of the resolution. However, in principle, the fact that a recommendation by the Ombudsperson in favour of de-listing can be disregarded by the Committee only through a consensus determination or by a decision of the Council represents a significant step forward in terms of enhancing the fairness and transparency of the process.

Reasons for the decision

44. A further issue regarding the decision-making process is the question of reasons for the decision. As formal notifications on the cases that have been decided are still pending, no comment on practice is possible at this early stage. However, this principle has been recognized by the Security Council: in its resolution 1989 (2011), the Council requires the Committee to provide reasons for rejecting a de-listing petition.[8] Obviously, this is of critical importance in the case of a refusal to de-list.

45. As outlined in the first report of the Office of the Ombudsperson, providing such reasons is also important in the case of a decision to de-list. In addition to evidencing the reasonableness of the decision-making process, the information is valuable to the Ombudsperson in assessing other cases and ensuring consistency of analysis. Also, in the context of using sanctions to change conduct, the reasons can be used by the Ombudsperson in the course of her dialogue with other petitioners. While appreciating the changes brought about by Security Council resolution 1989 (2011), for the reasons expressed in the first and in the present report, it would be helpful if consideration were given to the possibility of requiring the Committee to provide reasons to the de-listed person or entity, through the Ombudsperson or another channel.

Non-disclosure of the identity of designating States

46. The issue of disclosing the identity of designating States to petitioners remained a concern during the reporting period. Of the initial cases where consent for disclosure was sought, results were mixed with regard to whether the relevant State agreed to the disclosure of the information. In its resolution 1989 (2011), the Security Council addressed the issue by strongly urging States to consent to disclosure (para. 29). The effect of that provision on practice will be assessed in the coming months.

[8] See paragraph 13 of annex II. A similar requirement is set out in paragraph 33 of the resolution, by which the Security Council directs Committee members to provide their reasons for objecting to de-listing requests.

Mandate for following up on de-listing

47. The practice to date has demonstrated that the Office of the Ombudsperson has the potential to play a role in following up on cases of de-listed persons or entities that continue to encounter difficulties with respect to financial or travel restrictions. Moreover, individuals and entities with names similar to those of listed individuals and entities continue to face financial and travel restrictions. The fairness concerns for individuals and entities facing unjustified restrictions are obvious. While other possible solutions could be found through the Committee or bilaterally, the Ombudsperson is well placed to facilitate a satisfactory resolution in such situations in an expeditious manner.

48. On a related point, recently there have been instances in which individuals have approached the Ombudsperson seeking assistance in receiving humanitarian or travel exemptions from the Committee. Given the limits of the mandate, only basic information can be provided currently in response to such requests. However, particularly for individuals residing in States with limited resources and capacity, it is unlikely that such exemptions will be granted. It would seem appropriate, therefore, to provide the Ombudsperson with the mandate to bring such cases to the attention of the Committee. Doing so would be consistent with the Security Council's intention, expressed most recently in its resolution 1989 (2011), that appropriate use be made of the provisions regarding exemptions and that the exemptions be granted in an expeditious and transparent manner.

49. For the reasons set out above and in the first report of the Office, it would be helpful if consideration were given to extending the mandate of the Office of the Ombudsperson so that it could follow up on cases to ensure that sanctions measures are not improperly applied and to assist with the process of exemptions by bringing relevant cases to the attention of the Committee.

Resources

50. As the mandate of the Office of the Ombudsperson has been renewed for an additional 18-month period and the caseload has increased, the need for the resources identified in the first report of the Office has become more pressing. While the Department of Political Affairs continues to skilfully assist the Office, dedicated resources are needed for the Ombudsperson to be able to fulfil the mandate accorded by the Security Council. This need has clearly been recognized by the Council in its resolution 1989 (2011) (para. 24).

51. To sustain the work of the Office, a dedicated administrative officer and a senior legal professional are essential. In addition, resources sufficient to support travel, particularly for operational matters such as examining sensitive information or meeting with a petitioner, are necessary. It is to be noted, in this regard, that in its resolution 1989 (2011) the Security Council indicated that the Ombudsperson should meet with the petitioner, to the extent possible (annex II, para. 6 (c)).

52. Furthermore, practice in the first cases has demonstrated very noticeably the imperative need for translation services, which have proved critical to ensuring that petitioners understand the case and that any response provided is properly and clearly presented to the Committee. Thus, it is apparent that adequate resources for translation are also necessary for the proper functioning of the Office of the Ombudsperson.

Annex I

Procedure for requests for de-listing submitted to the Office of the Ombudsperson

1. An application for de-listing will be considered in accordance with the detailed process outlined in annex II to Security Council resolution 1989 (2011).

I. Preliminary determinations

2. The procedure for de-listing begins with a preliminary determination by the Ombudsperson that the request properly addresses the designation criteria applicable to the Al-Qaida Sanctions List.[a] Specifically, the request should set out the reasons/justification for de-listing, taking into account the acts or activities indicating that an individual or entity is associated with Al-Qaida. These include the following:

(a) Participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of or in support of;

(b) Supplying, selling or transferring arms and related material to;

(c) Recruiting for;

(d) Otherwise supporting acts or activities of Al-Qaida or any cell, affiliate, splinter group or derivative thereof.

3. The Ombudsperson must also determine initially whether the request constitutes a new or a repeat request. In the latter case, the Ombudsperson must be satisfied that additional material is being provided on this occasion. This requirement is only applicable to repeat requests to the Ombudsperson. Where a previous request has been made through the focal point or another channel, the request to the Office of the Ombudsperson will be considered to be the initial one.

II. Process for consideration of the request

4. Unless the request is rejected on the grounds that it does not fulfil the requirements set out above, it will be assessed in a three-phase process.

Information-gathering phase

5. The information-gathering phase is designed to allow the Ombudsperson to collect as much detailed information of relevance to the de-listing request as possible. This is essential to ensure that the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated

[a] Pursuant to the adoption of Security Council resolution 1989 (2011) on 17 June 2011, individuals and entities associated with Al-Qaida on the list established pursuant to resolutions 1267 (1999) and 1333 (2000) (the Consolidated List) were placed on the Al-Qaida Sanctions List.

individuals and entities[b] has before it all the pertinent material for making a decision on the request.

6. The Ombudsperson will distribute the request to the Committee, the designating State, the State(s) of nationality/residence (or incorporation/operation, for entities), the Analytical Support and Sanctions Monitoring Team (a group of experts that assists the Committee) and other relevant States or United Nations bodies, and follow up by engaging with these States and bodies in an effort to assemble all relevant information about the request. The initial information-gathering phase lasts four months starting from the date on which the request is transmitted to the Committee.

7. While the aim is to collect the information as expeditiously as possible and within the four-month period, the Ombudsperson can extend the period by up to two additional months. This will be done when the Ombudsperson determines it is necessary in order to ensure that all germane information is gathered.

Dialogue and report phase

8. The information-gathering phase is followed by a two-month period during which the Ombudsperson will facilitate engagement and dialogue with the petitioner by relaying questions and responses between the petitioner, relevant States, the Committee and the Monitoring Team.

9. This critical phase provides the Ombudsperson with an opportunity to explore in detail with the petitioner the various aspects of the case. It gives the petitioner an opportunity to be heard, address issues and answer questions with the goal of ensuring that his or her position is fully explained and understood.

10. In addition to making his or her own queries or requests for clarification and additional information, the Ombudsperson will pose any questions and convey any requests from the Committee, relevant States and the Monitoring Team and coordinate with them with respect to replies, in order to be satisfied that the salient issues are thoroughly canvassed and examined.

11. The dialogue phase can be extended for up to two months. Again, the decision to extend depends on whether the Ombudsperson determines that further time is needed to ensure a comprehensive dialogue and exchange on the relevant issues of the case.

12. During this phase, the Ombudsperson will prepare a report on the de-listing request. While, in accordance with Security Council resolution 1989 (2011), the Ombudsperson can seek the help of the Monitoring Team in preparing the report, by policy decision the report will be prepared independently by the Ombudsperson.

13. The report will provide a comprehensive review of the case and the Ombudsperson's recommendation on the de-listing of the individual or entity for the Committee's consideration. The Ombudsperson will either recommend that the individual or entity remain on the list or that the Committee consider removing the individual or entity from the list. The report will summarize the information

[b] The Committee carries on the work with respect to Al-Qaida and associated individuals and entities previously undertaken by the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities.

gathered, specifying the sources of it, as appropriate, and describe the interaction and activity undertaken by the Ombudsperson with respect to the request. It will include a description of any interaction with the petitioner. The report will set out the principal arguments concerning the de-listing request, based on an analysis of all the available information and the Ombudsperson's observations. In addition, it will contain a recommendation.

Committee discussion and decision phase

14. After the Committee has had 15 days to review the Ombudsperson's report in the six official languages of the United Nations, the report will be placed on the Committee's agenda for consideration. The Committee's review of the report will be completed no later than 30 days after it was made available to the Committee in all the official languages of the United Nations. The Ombudsperson will present the report in person to the Committee and answer questions on it. After consideration, the Committee will decide on the de-listing request.

15. If the Ombudsperson recommends that the individual or entity should remain on the list, the individual or entity will continue to be subject to the sanctions measures unless a Committee member submits a de-listing request that the Committee will consider under its normal consensus procedures for de-listing requests from States.

16. If the Ombudsperson recommends that the Committee consider de-listing, the individual or entity will be removed from the list unless the Committee decides by consensus, within 60 days, that the individual or entity should continue to be subject to the sanctions. Where consensus does not exist, the Chair of the Committee, upon request of a Committee member, can refer the question of de-listing to the Security Council. The Council then has a further 60 days to make its decision. While the Committee and the Council are considering the de-listing question, the sanctions measures remain in place.

III. Communication of decision

17. If the Committee grants the de-listing request, the decision will be communicated to the Ombudsperson, who will inform the petitioner. The petitioner's name will be removed from the Al-Qaida Sanctions List.

18. If the Committee rejects the de-listing request, that decision, including the Committee's reasons for rejecting the request, any further relevant information about the Committee's decision and an updated narrative summary of reasons for listing, will be conveyed to the Ombudsperson. Within 15 days of the notification, the Ombudsperson will send the petitioner a letter communicating the Committee's decision and describing, to the extent possible and drawing upon the Ombudsperson's report, the process and publicly releasable information gathered by the Ombudsperson. In addition, the Ombudsperson will forward to the petitioner all the information provided by the Committee to the Ombudsperson.

IV. Confidentiality

19. In accordance with the procedure established in annex II to Security Council resolution 1989 (2011), a de-listing request submitted to the Ombudsperson will be shared with the Committee, relevant States and other United Nations bodies. In addition, it may be necessary to disclose information on the request to others as part of the information-gathering process. Furthermore, the Ombudsperson will provide information on the existence or status of a particular request where there is pending litigation and information is sought for the purpose of apprising a relevant court. Otherwise, the Ombudsperson will treat the requests submitted as confidential.

20. Petitioners are obviously not bound by any confidentiality restrictions with regard to their applications and may therefore choose to disclose information to the public and discuss a de-listing request. Should a petitioner choose to make his or her request public, the Ombudsperson will thereafter treat the existence and status of the request as a public matter. However, the Ombudsperson will not publicly comment on or discuss the details of any pending case. Once a case has been completed and if the decision is taken to de-list, the name of the relevant individual or entity will be disclosed. In the case of a decision not to de-list, the name of the individual or entity will not be disclosed and will remain subject to the same confidentiality restrictions outlined above.

Annex II

Status of cases

Case 1 (Status: Committee discussion and decision phase)

Date	*Description*
28 July 2010	Transmission of case 1 to the Al-Qaida and Taliban Sanctions Committee[a]
28 September 2010	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 28 October 2010
28 October 2010	Written update at the end of the extended information-gathering period submitted to the Committee
13 December 2010	Written update on the dialogue period submitted to the Committee; dialogue period extended to 28 February 2011
28 February 2011	Comprehensive report submitted to the Committee
10 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee

[a] On 17 June 2011, pursuant to Security Council resolutions 1988 (2011) and 1989 (2011), the Al-Qaida and Taliban Sanctions Committee was succeeded by the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities and the Security Council Committee established pursuant to resolution 1988 (2011).

Case 2, Safet Ekrem Durguti (Status: de-listed)

Date	*Description*
30 September 2010	Transmission of case 2 to the Committee
30 November 2010	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 11 January 2011
14 January 2011	Written update at the end of the extended information-gathering period submitted to the Committee
2 March 2011	Written update on the dialogue period submitted to the Committee; dialogue period extended to 16 May 2011
26 April 2011	Comprehensive report submitted to the Committee
31 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision to de-list

Case 3 (Status: Committee discussion and decision phase)

Date	*Description*
3 November 2010	Transmission of case 3 to the Committee
6 January 2011	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 14 February 2011
14 February 2011	Written update at the end of the extended information-gathering period submitted to the Committee
11 April 2011	Written update on the dialogue period submitted to the Committee; dialogue period extended to 14 June 2011
14 June 2011	Comprehensive report submitted to the Committee

Case 4 (Status: Committee discussion and decision phase)

Date	*Description*
6 December 2010	Transmission of case 4 to the Committee
7 February 2011	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 21 March 2011
22 March 2011	Written update at the end of the extended information-gathering period submitted to the Committee
19 May 2011	Written update on the dialogue period submitted to the Committee; dialogue period extended to 5 July 2011
29 June 2011	Comprehensive report submitted to the Committee

Case 5, Tarek Ben Al-Bechir Ben Amara Al-Charaabi (Status: de-listed)

Date	*Description*
30 December 2010	Transmission of case 5 to the Committee
3 March 2011	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 18 April 2011
19 April 2011	Written update at the end of the extended information-gathering period submitted to the Committee
26 April 2011	Comprehensive report submitted to the Committee

Date	*Description*
31 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision to de-list

Case 6 (Status: Committee discussion and decision phase)

Date	*Description*
14 January 2011	Transmission of case 6 to the Committee
14 March 2011	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 25 April 2011
26 April 2011	Written update at the end of the extended information-gathering period submitted to the Committee
17 June 2011	Comprehensive report submitted to the Committee

Case 7, Abu Sufian Al-Salamabi Muhammed Ahmed Abd Al-Razziq (Abousfian Abdelrazik), QI.A.220.06. (Status: dialogue phase)

Date	*Description*
28 January 2011	Transmission of case 7 to the Committee
29 March 2011	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 30 May 2011
1 June 2011	Written update at the end of the extended information-gathering period submitted to the Committee; dialogue phase due to end 1 August 2011

Case 8 (Status: dialogue phase)

Date	*Description*
17 March 2011	Transmission of case 8 to the Committee
18 May 2011	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 28 June 2011
28 June 2011	Written update at the end of the extended information-gathering period submitted to the Committee; dialogue phase due to end 29 August 2011

Case 9 (Status: information-gathering phase)

Date	*Description*
19 April 2011	Transmission of case 9 to the Committee

Case 10 (Status: information-gathering phase)

Date	*Description*
6 May 2011	Transmission of case 10 to the Committee

Case 11 (Status: information-gathering phase)

Date	*Description*
1 June 2011	Transmission of case 11 to the Committee

Case 12 (Status: information-gathering phase)

Date	*Description*
30 June 2011	Transmission of case 12 to the Committee

Case 13 (Status: information-gathering phase)

Date	*Description*
7 July 2011	Transmission of case 13 to the Committee

Case 14 (Status: information-gathering phase)

Date	*Description*
20 July 2011	Transmission of case 14 to the Committee

Annex III

Approach to and standard for analysis, observations and principal arguments*

I. Context

1. Decisions regarding the Al-Qaida and Taliban sanctions regime of the Security Council rest exclusively with the Council. With respect to the list created pursuant to Council resolutions 1267 (1999) and 1333 (2000) (the Consolidated List), the Council mandated its Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities with making determinations regarding listing and de-listing in accordance with the overarching criteria set out by the Council. The creation of the Office of the Ombudsperson has not altered that decision-making structure. As a corollary, it is clearly for the Council and the Committee to determine what standards it will apply in taking decisions in this context.

2. The Ombudsperson has been assigned the important role of assisting the Committee in its determinations on de-listing. In that role, to ensure that the analysis and observations of the Ombudsperson are provided in a fair and consistent manner from case to case, it is necessary to clearly articulate the approach being employed and the standard by which the information is to be assessed.

3. Both the approach and the standard must be informed by the unique context in which decisions are being taken by a body of the Security Council and the particular role of the Ombudsperson. Furthermore, the method and test employed must take into consideration the threat to international peace and security underlying the sanctions, as well as the serious nature of the sanctions measures when applied to individuals and entities.

II. Approach

4. The Security Council has mandated the Ombudsperson to assist the Committee with de-listing requests by, inter alia, providing an analysis of and observations on all information available to the Ombudsperson relevant to the de-listing request.

5. The present document provides clear guidance as to the nature of the analysis and observations expected. As the role of the Ombudsperson is to assist with de-listing decisions, any comments provided should obviously relate to the question that the Committee must answer in deciding on a de-listing request.

6. The Security Council has not defined separate criteria that must be met for de-listing to occur. While in paragraph 14 of its resolution 1735 (2006) the Council sets out steps that the Committee may consider taking in determining whether to remove names from the Consolidated List, these cannot be categorized as mandatory.

* The Ombudsperson transmitted the present document to the Chair of the Al-Qaida and Taliban Sanctions Committee on 28 February 2010.

7. Rather, the relevant Security Council resolutions indicate that the Committee will, in reviewing a de-listing request, consider all the relevant circumstances with a view to determining whether an individual or entity continues to meet the criteria for listing set forth by the Council. In essence, the test for de-listing is the opposite of the test for listing. Therefore, the analysis and observations of the Ombudsperson should also focus on that question.

8. In addition, the Security Council has unmistakably signalled that a de-listing decision will be a *de novo* one that looks at the circumstances as they stand at the time of the de-listing request to determine the appropriateness of a continued listing. In that regard, the Council's inclusion in its resolution 1735 (2006) of disassociation as a factor that may be considered with reference to de-listing, evidences this approach. Similarly, the Council, in paragraph 22 of its resolution 1904 (2009), directed the Committee to continue to work to consider the removal from the Consolidated List of members and/or associates of Al-Qaida, Osama bin Laden, or the Taliban who no longer met the criteria, thus supporting the consideration of circumstances that have changed since the original listing. Furthermore, in that same resolution the Council plainly directed the Ombudsperson to analyse all the available information (see para. 7 (c) of annex II). The absence of restrictions, particularly temporal ones, makes it evident that the assessment should address all the pertinent material, whether relied on in the context of the original decision or not.

9. At the same time, any assessment of all the information presently available will include information on the historical context of the listing and, in particular, the circumstances surrounding the original designation. It is also evident that, in the context of a comprehensive analysis, the absence of recent information is in no way determinative. It is simply one factor that needs to be weighed and assessed on the basis of the particular circumstances of each case.

10. In conclusion, since the role of the Ombudsperson is to assist the Committee in its decision-making process, the analysis conducted and observations provided should relate substantively to the question to be determined by the Committee: does an individual or entity continue to meet the criteria for being included on the Consolidated List? To accomplish this, the analysis and observations of the Ombudsperson, as well as the principal arguments set out, should address, to the defined standard, whether today the continued listing of the individual or entity is justified based on all of the information now available.

III. Standard

11. In order to support the Ombudsperson in submitting coherent analyses and observations, the information gathered and the reasoning applied to it must be assessed to a consistent standard. This standard must be one that is appropriate to the unique context of decisions by a Committee acting under the express direction of the Security Council. It must take into account the purely international framework, where the benchmark used cannot be premised on the precepts of one particular legal system or tradition. It must instead focus on concepts generally accepted as fundamental across legal systems. In order to arrive at an appropriate standard for the Ombudsperson to apply, national and regional law and jurisprudence has been examined, particularly in the context of the freezing of assets

and other restrictions placed in counter-terrorism regimes.[a] This research has helped to inform the development of an appropriate test in the context of the Al-Qaida and Taliban sanctions regime.

12. The standard must also reflect the express intent of the Security Council with regard to the purpose of the sanctions, namely that they be preventative in nature and not reliant upon criminal standards set out under national law (see Council resolution 1735 (2006)). At the same time, they must be of sufficiently adequate substance to sustain the serious restrictions imposed on individuals and entities through their application.

13. In this regard, it is evident that the standard applicable in criminal proceedings, nationally, regionally or internationally, is not appropriate for assessing the information and circumstances related to a listing by the Committee. The sanctions are not intended to punish criminal conduct. Rather, relevant Security Council resolutions demonstrate that the aim is twofold: to hamper access to resources in order to impede, impair, isolate and incapacitate the terrorist threat from Al-Qaida, Osama bin Laden and the Taliban, and to encourage a change of conduct on the part of those who are members of Al-Qaida or the Taliban or who are associated with Osama bin Laden or either group. In these circumstances, the standards applicable to a determination of criminal guilt or innocence are obviously of a different nature and serve a distinct purpose from that of the sanctions.

14. At the same time, the sanctions resulting from inclusion on the Consolidated List are of a significant nature. When implemented on an international scale they have a direct and considerable impact on the rights and freedoms of individuals and entities. They are also of an indeterminate length, as they have no specified end date. Therefore, there must be some substance and reliability to the information upon which such sanctions are applied to listed individuals and entities. Mere suspicion or the reliance upon unverified statements are not enough in this context.

15. Finally, the standard must be take into account the wide variety of circumstances and types of information relevant to these cases, particularly given the international nature of the listing process.

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[a] Several States use their normal criminal or other judicial procedure to freeze terrorists' assets and so rely on standards applicable to the initiation of a criminal investigation or prosecution or application for a judicial warrant for freezing by, for example, assessing whether there is sufficient evidence or a strong suspicion of wrongdoing. In a number of common law jurisdictions, the designation of entities as terrorist is based on the existence of reasonable grounds or a basis to believe, suspect or be satisfied of involvement in or commission of terrorist acts or activities. The Financial Action Task Force also recommends making use of the alternatives of reasonable grounds or a basis to suspect or believe, as does the Commonwealth's Model Legislative Provisions on Measures to Combat Terrorism (reasonable grounds to suspect or believe). In one interesting common law deviation the legislation used to designate terrorist groups requires demonstration of "sufficient cause" to uphold an unlawful association listing. The European Union uses different language again: the European Council lists a person where there is precise information or material indicating that a decision has been taken by a competent authority of a member State based on serious and credible evidence or clues. In a different context, article 1, subparagraph (f), of the Convention relating to the Status of Refugees states that the provisions of the Convention shall not apply to individuals with respect to whom there are serious reasons for considering that they have committed an international crime.

16. Taking into account the need to balance these factors, the standard for the Ombudsperson's analysis and observations should be whether there is sufficient information to provide a reasonable and credible basis for the listing.

17. Sufficiency provides the necessary flexibility in terms of assessing different types of information from distinct sources, quantitatively, qualitatively and in substance. The criteria of reasonableness and credibility ensure that the combined circumstances provide a rational base for the listing, which is reliable enough to justify the imposition of sanctions. Sufficiency, reasonableness and credibility also offer appropriate benchmarks for analysing, as far as is possible, underlying information and the reasoning that is applied to it in relation to the listing. It is a standard that recognizes a lower threshold appropriate to preventative measures while setting a level of protection that is sufficient for safeguarding the rights of individuals and entities in this context.